

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of)
Issues)
)
FARIBORZ NEZAMABADI)
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_____)

Case #: 1D 2001 62796

The foregoing Proposed Decision, in case number 1D 2001 62796, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 7th day of April, 2004.

It is so ordered this March 6, 2003 .

Original Signed By:
Ellen Wilson, P.T., President
Physical Therapy Board
of California

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

FARIBORZ NEZAMABADI

Respondent,

Case No. ID 2001 62796

OAH No. N 2002100634

PROPOSED DECISION

On February 7, 2003, in Sacramento, California, Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Daniel J. Turner, Deputy Attorney General, represented the complainant.

Fariborz Nezamabadi, respondent, represented himself.

Evidence was received, the record was closed on February 7, 2003 and the matter was submitted.

FACTUAL FINDINGS

1. Respondent was licensed to practice Physical Therapy in the State of Massachusetts in February 1995. On April 12, 1998, respondent and the Massachusetts Board of Allied Health Professions entered into a Consent Agreement pursuant to a disciplinary action against respondent. The Consent Agreement resulted in respondent being placed on probation for two years. His license was not revoked. Terms and conditions of probation were imposed on respondent. All terms and conditions have been satisfied. After respondent was disciplined in Massachusetts he applied for and was granted licensure as a Physical Therapist in the states of Rhode Island, Florida, New Hampshire, and Texas. Respondent currently resides in and he practices Physical Therapy in the State of Texas. He does not nor has he ever lived in California.

2. On April 22, 2001, respondent submitted an application to the Board for a Physical Therapist license. On February 5, 2002 the Board denied respondent's application.

3. On June 14, 2002, Steven K. Hartzell, Executive Officer Physical Therapy Board of California, Department of Consumer Affairs (Board), (Complainant), acting in his official capacity issued the Statement of Issues against respondent.

4. The facts surrounding the discipline imposed on respondent involved a relationship between respondent and a female patient while he practiced the healing art of Physical Therapy in the State of Massachusetts.

5. Respondent requested leave to read into the record his prepared opening statement. His request was granted. He was placed under oath to enable his reading to constitute testimonial evidence.

6. Respondent conceded a mistake in judgment by his failure to immediately inform his supervisor that he was being romantically pursued by one of his patients. Respondent further testified he never committed unprofessional conduct "during my treatment session with the female patient..." "Respondent testified that he told the patient that "...perhaps it was not a good idea that we were out walking together"...

Of course it is possible that respondent may have been telling the truth when he said that he never committed unprofessional conduct "during my treatment session..." However, during cross examination and for the first time respondent, after repeated questioning, conceded that his conduct was unprofessional and that it included kissing the patient. He had a mutually consensual romantic relationship with the patient. The relationship went beyond what he would have this tribunal believe. It involved more than being pursued by his female patient and it involved more than "walking together". It involved a mutually consensual romantic relationship. The only reasonable conclusion is that respondent intended to mislead this tribunal during his direct testimony.

7. "...a patient had a crush on me and thus I became the victim of my mistake (in judgment) and her malicious vengeful behavior with her false complaint because I refused to have a relationship with her".

Respondent's statement: "I refused to have a relationship with her" is misleading. From this prepared statement, it could reasonably be inferred that respondent wanted this tribunal to believe that he had no relationship what ever with the patient. That inference would have been erroneous. Because respondent's statement appears to have been drafted with care and purpose, the only reasonable conclusion is that respondent intentionally sought to mislead this tribunal. During cross examination respondent conceded that he did have a relationship with the patient, but he asserted numerous times that he intended to terminate the patient/professional relationship. Most disquieting is respondent's insistence that "he intended to terminate the patient/professional relationship" assuming that such statement might suggest that under those circumstances he did not breach his ethical standards of

conduct. This expression of belief was uttered this day of hearing, February 7, 2003. This day of hearing is after he is alleged to have satisfied the terms of his Massachusetts probation which included taking a course in ethical standards of conduct. For respondent to be under the impression that terminating the patient/professional relationship somehow eliminated the prior unprofessional conduct strongly suggests that respondent did not comply the terms of his probation and attend a course on ethical standards. Or in the alternative, if he did attend the course on ethics he failed to understand what is required of him as a physical therapist professional.

8. Respondent's testimony compels the conclusion that he could not have rehabilitated because he does not know or understand the rules of conduct, or in the alternative he deliberately sought to mislead this tribunal. Under either alternative respondent caused and he is responsible for causing this tribunal to believe that he is unfit to practice Physical Therapy in the State of California. His attempt to excuse his failure to fully disclose the fact that there was a mutual and consensual romantic relationship between himself and the patient, on the basis that such facts were technicalities, is a contention utterly without merit. Respondent's statement that to some extent he is placed at a disadvantage because he is without an attorney is a contention equally without merit. Respondent was afforded due process.

9. It is believable that respondent was threatened by his patient. And yes, respondent is correct in asserting that persons in the health care professions are vulnerable to abuses by unscrupulous patients. This is, in part, why the rules of professional conduct have been developed so to minimize the exposure of health care professionals to abuse. Respondent's conduct defeated this very protection.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Respondent's professional misconduct in Massachusetts was substantially related to the qualifications, functions and duties of a licensed Physical Therapist. Cause exists to deny respondent's licensure in the State of California.

3. Business and Professions Code section 480, can constitutionally bar a respondent from practicing Physical Therapy in California. However, this prohibition is limited to those circumstances relating to the person's fitness to practice the profession, Thorpe v. Board of Examiners, 104 Cal. App. 3d 111. Respondent seeks to be licensed as a Physical Therapist. In that capacity he would be placed in a position of trust involving a wide range of activities calling upon his professional judgment and calling upon his trustworthiness. At the present hearing respondent demonstrated his willingness to mislead. Respondent has demonstrated a disregard for the truth and for this reason cause exists to deny respondent's licensure.

4. Business and Professions Code section 726 provides:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

5. Business and Professions Code section 2660.1 provides:

A patient, client, or customer of a licensee under this chapter is conclusively presumed to be incapable of giving free, full, and informed consent to any sexual activity which is a violation of Section 726.

6. The commission of any act of misconduct, including relations with a patient, constitutes unprofessional conduct and such conduct constitutes grounds for discipline. Respondent did have an unprofessional relationship with a patient. He refused to accede to the complaint's contention that it was a sexual relationship. Respondent's asserted belief is not credible. Notwithstanding respondent's belief however, the rules of conduct in Massachusetts as well as in California view his conduct as unprofessional sexual misconduct. Respondent thereby subjected himself to discipline. Cause exists to deny respondent's licensure in the State of California.

7. Respondent's patient very-well may have threatened him. And, health care professionals are vulnerable to abuses by unscrupulous patients. This is, in part, why the rules of professional conduct have been developed and adopted to minimize their exposure. Respondent's violation of his professional rules of conduct resulted in him being a victim of his own misconduct.

8. Business and Professions Code section 2661.5 provides:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who

enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

9. In any order issued in resolution of a disciplinary proceeding before the Board, including an applicant for licensure, the applicant may be directed to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case pursuant to Business and Professions Code section 2661.5. Costs have been incurred by the Board in this matter. In this case no certification of costs was offered in evidence. No costs will be awarded.

10. Physical Therapists occupy positions of trust and a high level of responsibility in society. They often function without supervision. Respondent did not persuasively show that he is rehabilitated such that he can be licensed at the present time without risk of harm to the public. Respondent did not show substantial evidence of rehabilitation. It would be contrary to the public interest to permit respondent to become licensed at this time.

ORDER

1. The complainant's refusal to issue a Physical Therapist license to respondent is SUSTAINED.

2. The application of Fariborz Nezamabadi for the issuance of a Physical Therapist license is DENIED.

Dated: February 11, 2003

Original Signed By:
DENNY R. DAVIS
Administrative Law Judge
Office of Administrative Hearings